THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 25520 OF 1997

Date: 02.09.2005

Between:

E.Prabhudas, S/o George, Aged about 40 years, working as Marketing Manger, A.P.State Agro Industries Development Corporation Limited, Ongole.

… Petitioner

and

The Vice-Chairman and Managing Director, A.P.State Agro Industries Development Corporation Limited, 10-2-3, A.C.Guards, (Agro Bhavan), Hyderabad 500 004.

… Respondent.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 25520 OF 1997

ORDER:

Action of the respondents in seeking to recover Rs.14,202/- at the rate of Rs.1,000/- per month from the salary of the petitioner vide proceedings dated 01.04.1997; in holding him responsible for a sum of Rs.38,751.50Ps, vide proceedings dated 23.11.1996 and ordering recovery from his salary at the rate of Rs.1,000/- per month, is questioned in this writ petition, as without jurisdiction, and as being contrary to law and the service rules of the Corporation.

Facts, to the extent necessary for this writ petition, are that the petitioner joined in the 1st respondent Corporation in the year 1980 as Senior Marketing Officer and was posted at Srikakulam. During 1983, he was transferred to Bhimavaram, West Godavari District. In June 1988, he was posted as Regional Manager, with full Additional Charge, at Nellore. In August 1990, he was posted as regular Regional Manger at Cuddapah, in December, 1990 at Eluru and from June, 1994 as Marketing Manager at Ongole.

The petitioner was served with a charge memo dated 16.05.1994 framing three charges against him which included charges of Improper Supervision, willful violation of orders and dereliction of duties. Petitioner submitted his explanation thereto on 08.02.1994, thereafter the enquiry officer was appointed to conduct the domestic enquiry. Subsequently memo dated 02.05.1995 was issued, whereby the petitioner was informed that a commission agent for AVSK, Kovvur was appointed without obtaining bank guarantee and as a result, the Corporation was put to loss and had to file a civil suit to realize the principal amount of Rs.77,053/- plus interest. Explanation of the petitioner was called for in not following the instructions of the Head Office. The petitioner submitted his explanation thereto on 30.06.1996 and the Vice Chairman and Managing Director of the Corporation, vide proceedings dated 23.11.1996, having found that the explanation submitted by the petitioner was not convincing, ordered for recovery of the amount of Rs.77,053/- from the petitioner and another employee equally at Rs.38,751.50Ps each to be paid at Rs.1,000/- pm in 38 instalments and balance of Rs.751.50Ps in the 39th instalment. With respect to the charge memo dated 16.05.1994, the Vice Chairman and Managing Director, vide proceedings dated 01.04.1997, directed 10% of the shortage amount i.e., for a sum of Rs.14,202/- to be recovered from the petitioner in 13 instalments and the balance of Rs.1202/- in the 14th instalment.

Sri T.P.Achari, learned Counsel for the petitioner, would submit that the punishment of recovery from pay is not one of the punishments enumerated in the regulations. He would also submit that the punishment imposed on the petitioner was contrary to the regulations of the 1st respondent inasmuch as no enquiry was held and the punishment imposed was merely on the basis of the charge memo.

I do not see any force in the first submission of the learned Counsel that the Regulations do not empower imposition of punishment of recovery from pay.

Regulation-8 deals with the Disciplinary procedure and among the penalties prescribed therein, includes Regulation 8.1(v), recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by the employee. Since recovery from pay is one of the penalties specified in Regulation 8.1, the respondents undoubtedly have the power to impose such a punishment.

I find considerable force in the other submission that imposition of penalty, of recovery from pay, has necessarily to be preceded by a domestic enquiry and it is only if the charges alleged are proved in the enquiry, that such punishment can be imposed. Regulation 8.3 deals with the procedure for imposition of penalty. Clauses (i) to (iii) therof relate to imposition of punishment of Censure, fine and withholding of increment or promotion, and Reduction to a lower post or grade or to a lower stage in the scale of pay. No oral enquiry is contemplated in 8.3 for imposition of these punishments prescribed in Clauses (i) to (iii) and these punishments can be imposed on issuance of a charge sheet, calling for the explanation of the employee concerned and on receipt of his explanation thereto.

8.4 deals with the procedure for other penalties from (iv) to (vii) and reads as under:

"Where it is proposed to inflict any of the penalties in (iv) to (vii) of para 6 (1) on any employee, the competent authority shall appoint an enquiry officer who shall have a rank higher than the rank of the concerned employee. The enquiry officer shall hold such preliminary investigations as may be necessary to collect material and evidence required and frame specific charge or charges as against the employee setting out the full details of such lapses and irregularities. The enquiry Officer shall serve the memo of charges on the employee and call for his written explanation within a stipulated time which shall be not less than 15 days. The employee shall have the option to ask for a personal hearing or an examination of witness/es if any to defend himself and the enquiry officer shall give such a hearing or examine the witnesses indicated unless the examination of any particular witness is considered irrelevant in his opinion, in such an event, the reasons must be recorded briefly in writing. After the personal hearing and examination of the witnesses, the enquiry officer shall record the finding and forward the records of enquiry together with the written explanation of the employee and recorded evidence to the competent authority. Thereupon, the competent authority will come to a provisional conclusion as to the penalty to be inflicted on the employee and issue a show cause notice to the employee indicating the punishment proposed and calling upon hi to submit why the proposed punishment should not be inflicted, within a stipulated period which shall not be less than ten days. Along with the show cause notice, the findings of the enquiry officer shall also be furnished to the employee. The competent authority shall consider the further explanation, if any, made by the employee in response to the notice stated supra and determine what penalty, if any, should be imposed on the employee and pass such appropriate orders on the case."

It is thus clear that for imposition of punishment of recovery from pay, an enquiry officer is required to be appointed, a charge sheet is to be issued calling for the written explanation of the charge sheeted employee and option is required to be given to the employee as to whether he desires personal hearing or examination of witnesses, if any, to defend himself. The enquiry officer is required to give such hearing or examine the witnesses indicated,

Admittedly, in the case on hand, except for issuing a charge memo calling for the explanation of the petitioner, the enquiry, as contemplated under Regulation 8.4, has not been held. The impugned orders dated 01.04.1997 and 23.11.1996 are therefore clearly in violation of Regulation 8.4 of the Regulations of the 1st respondent Corporation.

Smt Balamani, learned Standing Counsel, would submit that charge memo dated 28.02.1997 has been issued by the enquiry officer, and that the petitioner is to be blamed for not participating in the enquiry, despite repeated reminders asking him to do so. Regulation 8.4 contemplates holding an enquiry and an enquiry report being submitted by the enquiry officer based on which, the disciplinary authority is required to take action in accordance with the Regulations. Admittedly, neither has any enquiry report been furnished, nor is the impugned action based on any report submitted by the Enquiry Officer after conducting a fullfledged Enquiry. Imposition of punishment, without complying with the requirements of Regulation 8.4, and merely on the basis of a charge memo followed by the explanation of the employee concerned would not suffice.

The impugned order is therefore quashed. It is however open to the respondents to take action against the petitioner in accordance with the Regulations of the 1st respondent Corporation. No costs.

Date: 02.09.2005.

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RAMESH RANGANATHAN, J

MRKR